

NOVA L. DODGEN

IBLA 80-703

Decided May 7, 1981

Appeal from decision of the Nevada State Office, Bureau of Land Management, rejecting oil and gas lease offer N 25343.

Affirmed.

1. Mineral Leasing Act: Lands Subject To--Oil and Gas Leases: Lands Subject To

Lands situated within the boundaries of incorporated cities, towns, or villages are excluded from oil and gas leasing under the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181-263 (1976).

2. Oil and Gas Leases: Applications: 640-Acre Limitation

Where an offer to lease covers approximately 640 acres of land but at the time the offer is made a portion of those lands is not available for leasing, the lease offer does not meet the requirements of 43 CFR 3110.1-3(a) and is properly rejected.

APPEARANCES: Nova L. Dodgen, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Nova L. Dodgen has appealed the decision of the Nevada State Office, Bureau of Land Management (BLM), dated May 7, 1980, rejecting oil and gas lease offer N 25343. The offer covers the W 1/2 sec. 3 and E 1/2 sec. 4, T. 23 S., R. 61 E., Mount Diablo meridian, a total of 636.92 acres.

The BLM decision states that the W 1/2 sec. 3 is rejected because these lands are located within the city limits of Henderson, Nevada, and therefore unavailable for leasing. It continues that "as a result, the balance of the lands in your offer did not include 640 acres as required by 43 CFR 3110.1-3(a)."

In her statement of reasons, appellant notes that the BLM status plat shows the label "DC All Minerals," or "DC OG" for the lands in her offer which she argues indicates that the lands are available for leasing. She also urges that in the past BLM has issued leases for less than 640 acres when an offer has contained 640 acres but a portion is rejected.

[1] Lands situated within the boundaries of incorporated cities, towns, or villages are excluded from oil and gas leasing under the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181-263 (1976). The pertinent Departmental regulation states that "[a]ll lands subject to disposition under the act which are known or believed to contain oil or gas may be leased by the Secretary of the Interior * * * (a) Exceptions: * * * (3) Incorporated cities, towns, and villages." 43 CFR 3101.1-1(a)(3). See Ed Pendleton, 45 IBLA 398 (1980); Hawthorn Oil Co., 37 IBLA 91 (1978). Thus, even though the United States may hold the mineral rights to a given tract of land, where the land falls within an incorporated city such as Henderson, Nevada, oil and gas leasing is precluded.

[2] Departmental regulation 43 CFR 3110.1-3(a) provides:

§ 3110.1-3 Acreage limitation.

(a) * * * No offer may be made for less than 640 acres except where the offer is accompanied by a showing that the lands are in an approved unit or cooperative plan of operation or such a plan has been approved as to form by the Director of the Geological Survey or where the land is surrounded by lands not available for leasing under the Act.

When examining offers to determine whether they meet this 640-acre requirement, the key is whether the lands in an offer were available for leasing at the time the offer was made. The Department has consistently distinguished between two situations: one, where all of the lands covered by an offer to lease were available for leasing at the time the offer was made and later some become unavailable, and the other, where the lands covered by an offer to lease included lands unavailable for leasing at the time of the offer. In the former case, BLM may issue a lease of less than 640 acres because the offeror has complied with the acreage requirement in making the offer but the lands subsequently have become unavailable. Melvin Wolf, 43 IBLA 128 (1979); Eugene J. Bernardini, 62 I.D. 231 (1955). In the latter case, the Department has ruled that the offer does not meet the regulatory

requirement and must be rejected in its entirety. J. Penrod Toles, 68 I.D. 285 (1961); Janis M. Koslosky, 66 I.D. 384 (1959).

In appellant's case, the lands in her offer which are within the incorporated city limits of Henderson, Nevada, were not available for leasing at the time appellant filed her offer and therefore the offer did not meet the acreage requirements of 43 CFR 3110.1-3(a). ^{1/} In addition, the lands in the offer were contiguous to other lands in the W. 1/2 sec. 4 available for leasing. Since neither exception in the regulation applies, BLM properly rejected the offer.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

^{1/} As noted, appellant's lease offer only contained 636.92 acres. However, the Department of the Interior will not reject an oil and gas lease offer for public domain lands solely for the reason of the offer being less than 640 acres where the amount by which the offer is under 640 acres is less than the amount by which the offer would exceed 640 acres by including the smallest adjoining subdivision available for leasing. James M. Chudnow, 47 IBLA 265 (1980).

